

SACK & SACK, ESQS.

Jonathan S. Sack, Esq.
 110 East 59th Street, 19th Floor
 New York, New York 10022
 Tel.: (212) 702-9000
Attorneys for Plaintiff, Marino Marin

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

MARINO MARIN,

Plaintiff,

— against —

**LANE BERRY & CO. INTERNATIONAL, LLC, and
 FREDRICK C. LANE**

Defendants.

Civ. No. 07 CV 10377 (RWS)

ECF CASE

**PLAINTIFF’S ANSWER TO
 COUNTERCLAIM**

Plaintiff, MARINO MARIN (“*Marin*” or “*Plaintiff*” or “*Counterclaim Defendant*,” as the case may be), by his attorneys Sack & Sack, Esqs. for its answer to the Counterclaim (herein referred to as the “*Counterclaim*”) filed by Defendants Lane Berry International & Co., LLC (“*Lane Berry*”) and Fredrick C. Lane, (“*Lane*”, together with Lane Berry, the “*Defendants*” or “*Counterclaim Plaintiffs*”), hereby responds and pleads affirmative defenses as follows:

ANSWER

AS TO "COUNTERCLAIM"

1. Plaintiff denies the allegations contained in paragraphs 125 – 127 of the Counterclaim. Furthermore, to the extent the statements contained in paragraphs 125 – 127 of the Counterclaim are quotes or paraphrases of an agreement, Plaintiff states that the entire applicable provisions of such agreement speak for themselves. In addition, to the extent the statements contained in paragraphs 125 – 127 of the Counterclaim constitute legal conclusions, no response is required. Notwithstanding, Plaintiff denies that Lane Berry has stated a claim for which relief can be granted, and also denies that Lane Berry is entitled to any relief thereunder. Furthermore to the extent that any allegations of fact are contained therein, Plaintiff denies same.

AFFIRMATIVE DEFENSES

2. Without assuming the burden of proof as to any of the following defenses where the law does not impose such burden on Plaintiff, Plaintiff asserts the following defenses:

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. Lane Berry's Counterclaim fails, in whole or in part, to state a claim upon which relief may be granted or for which damages may be awarded.

AS A FOR A SECOND AFFIRMATIVE DEFENSE

4. At all times, Plaintiff acted in good faith.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

5. To the extent that Lane Berry failed to make reasonable efforts to mitigate its alleged damages, any damages awarded to Lane Berry should be reduced or eliminated.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

6. Lane Berry's claims are barred by the equitable doctrines of waiver and estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

7. At all times, Plaintiff acted in compliance with the terms of any purported agreements it had with Lane Berry.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

8. Lane Berry engaged in bad faith acts of misconduct by breaching any agreement Lane Berry had with Plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

9. Lane Berry's causes of action are barred by the doctrine of Unclean Hands.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

10. The damages claimed by Lane Berry, if any, were the result of Lane Berry's own acts or omissions, not the acts or omissions of Plaintiff.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Honorable Court order the following relief in favor of Plaintiff:

- I. Dismissing the Counterclaim in its entirety with prejudice;
- II. Denying each and every demand, claim and prayer for relief contained in the Counterclaim;
- III. Granting all relief sought in Plaintiff's Complaint; and

IV. Such other and further relief that this Honorable Court may deem just and proper.

Dated: New York, New York
December 31, 2007

Respectfully submitted,

SACK & SACK, ESQS.

/s/ Jonathan Sack

By: Jonathan S. Sack, Esq. (JS 1835)

Attorneys for Plaintiff
110 East 59th Street, 19th Floor
New York, New York 10022
Tel.: (212) 702-9000
Fax: (212) 702-9702